

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

LYDIA M. GAINES,

Plaintiff,

v.

THE CITY OF DALLAS,

Defendant.

§
§
§
§
§
§
§
§

Civil Action No. **3:17-CV-1867-L**

ORDER

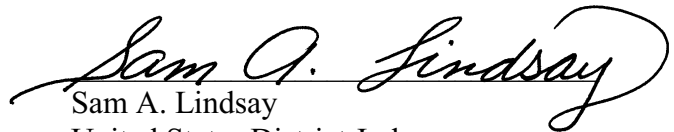
On December 28, 2018, the Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) (Doc. 34) were entered, recommending that the court grant Defendant The City of Dallas’s Motion to Dismiss Plaintiff’s Amended Federal Complaint (Doc. 27), and dismiss with prejudice Plaintiff’s employment law claims, which are brought pursuant to the Age Discrimination in Employment Act (“ADEA”), and her state law claim of defamation for failure to state a claim upon which relief may be granted. The magistrate judge further determined that Plaintiff had pleaded her best case in light of her decision to not respond to the motion to dismiss and her inability to overcome the deficiencies in her pleadings even after they were specifically pointed out in a prior report. The magistrate judge, therefore, recommends that Plaintiff not be given a further opportunity to amend her pleadings. No objections to the Report were filed.

After carefully reviewing the motion, pleadings, and Report, the court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the court. Accordingly, the court **grants** Defendant The City of Dallas’s Motion to Dismiss Plaintiff’s Amended Federal Complaint (Doc. 27) and **dismisses with prejudice** Plaintiff’s defamation and

ADEA claims for failure to state a claim upon which relief may be granted. Plaintiff has not requested another opportunity to amend her pleadings and, for the reasons stated by the magistrate judge, the court will not allow her to further amend her pleadings, as doing so would be futile and unnecessarily delay the proceedings in this case.

The court prospectively **certifies** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). In support of this certification, the court **incorporates** by reference the Report. *See Baugh v. Taylor*, 117 F.3d 197, 202 and n.21 (5th Cir. 1997). The court **concludes** that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). In the event of an appeal, Plaintiff may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal with the clerk of the United States Court of Appeals for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; Fed. R. App. P. 24(a)(5).

It is so ordered this 18th day of January, 2019.


Sam A. Lindsay
United States District Judge